

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

LYNN J. OLSEN, II (1), MARK G.  
PETERSON (2), BLAKE T. BENNETT  
(3), JEFFREY J. GORDON (4), OLSEN  
AG, INC. (5), POCO, L.L.C. (6),  
TRI-CITIES PRODUCE, INC. (7), and  
FRED F. ACKERMAN (8),

Defendants.

Nos. CR-11-6001-EFS-1  
CR-11-6001-EFS-2  
CR-11-6001-EFS-3  
CR-11-6001-EFS-4  
CR-11-6001-EFS-5  
CR-11-6001-EFS-6  
CR-11-6001-EFS-7  
CR-11-6001-EFS-8

**ORDER RULING ON THE POST-EVIDENCE  
RULE 29 MOTIONS, GRANTING THE  
USAO'S RULE 48 MOTION TO DISMISS,  
AND STRIKING ALL DATES AND  
DEADLINES**

The jury trial in this matter began on April 15, 2013, on the counts alleged in the Second Superseding Indictment, ECF No. 889: Counts 1-12. At the close of the U.S. Attorney's Office's (USAO) case, the Court dismissed Counts 2, 3, 6, 7, 8, 9, 11, and 12 pursuant to Defendants' Federal Rule of Criminal Procedure 29 motions. ECF Nos. 1167 & 1263.<sup>1</sup> Thereafter, Defendants presented evidence as to the remaining counts, and the USAO completed its rebuttal evidence

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<sup>1</sup> In its July 9, 2013 Order, ECF No. 1263, the Court inadvertently failed to identify that it granted Defendants' Motion for Judgment of Acquittal on Count 11/Mail Fraud, ECF No. 1153. For the reasons identified in the July 9, 2013 Order and as stated on the record, Defendants' motion, ECF No. 1153, is granted.

1 presentation on May 22, 2013. On May 23, 2013, the Court considered a  
2 number of Rule 29 motions filed by Defendants: 1) Defendants Mark  
3 Peterson and POCO, L.L.C.'s (POCO) Motion for Judgments of Acquittal  
4 on Counts 1, 4, and 5, and to Strike or Withdraw Portions of Count 1,  
5 ECF No. 1202; 2) Defendants Tri-Cities Produce, Inc. (TCP) and Blake  
6 Bennett's Motion for Judgment of Acquittal Pursuant to Rule of  
7 Criminal Procedure 29(a) and to Dismiss Counts 1, 4, 5, and 10,  
8 Joinder in Other Defense Motions, and Renewal of Motion to Dismiss  
9 Because Prosecution is Barred by Statute of Limitations, ECF No. 1203;  
10 3) Defendants' Motion for Judgment of Acquittal on Counts 4, 5, and  
11 10, ECF No. 1204; 4) Defendant Fred Ackerman's Motion for Judgment of  
12 Acquittal Pursuant to Federal Rules of Criminal Procedure 29 on Counts  
13 1, 4, 5, and 10, ECF No. 1205; and 5) Defendant Jeffrey J. Gordon's  
14 Motion for Judgment of Acquittal, ECF No. 1206. The Court considered  
15 the evidence and relevant Rule 29 standards and heard oral argument.  
16 For the reasons stated on the record, the Court denied all motions,  
17 except the Court 1) granted Defendant POCO's motion to dismiss Count  
18 5, and 2) reserved ruling on Defendant Ackerman's and Defendant  
19 Gordon's Rule 29 motions.  
20  
21

22 On June 5, 2013, the jury returned a "Not Guilty" verdict as to  
23 all Defendants charged in Count 4. ECF No. 1249. The jury was unable  
24 to reach a decision as to Counts 1, 5, and 10, and the Court declared  
25 a mistrial on these three Counts. ECF Nos. 1249 & 1257. On June 18,  
26 2013, the USAO gave notice that it did not intend to retry the  
27 Defendants as charged in Counts 1, 5, and 10. ECF Nos. 1258 & 1259.  
28

1 And on June 19, 2013, the USAO filed a Motion for Dismissal without  
2 Prejudice, ECF No. 1260, as to Counts 1, 5, and 10. On June 27, 2013,  
3 Defendant Gordon filed a Renewed Motion for Judgment of Acquittal or  
4 in the Alternative Dismissal with Prejudice, ECF No. 1261. Having  
5 considered the evidence and arguments presented and the relevant  
6 authority, the Court is fully informed. For the reasons that follow,  
7 the Court grants Defendants Gordon's and Ackerman's<sup>2</sup> reserved motions  
8 for judgment of acquittal and grants the USAO's motion to dismiss as  
9 to the other Defendants.  
10

11 **A. Defendants Gordon's and Ackerman's Rule 29 Motions**

12 Rule 29 states, in pertinent part, "[A]fter the close of all the  
13 evidence, the court on the defendant's motion must enter a judgment of  
14 acquittal of any offense for which the evidence is insufficient to  
15 sustain a conviction." Fed. R. Crim. P. 29(a); see *United States v.*  
16 *Talbert*, 710 F.2d at 530 (9th Cir. 1983). The court considers whether  
17 a reasonable jury, viewing the evidence in the light most favorable to  
18 the government, could find the defendant guilty beyond a reasonable  
19 doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States*  
20 *v. Rocha*, 598 F.3d 1144, 1157 (9th Cir. 2010). The government's  
21 direct and circumstantial evidence need not exclude every reasonable  
22 possibility consistent with innocence. *Talbert*, 710 F.2d at 530.  
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26 <sup>2</sup> The Court grants Defendant Ackerman's Rule 29 motion as to Counts 1,  
27 5, and 10, and denies as moot the motion as to Count 4 given that the jury  
28 found Defendant Ackerman not guilty on Count 4.

1 After fully considering the evidence presented at trial in the  
2 light most favorable to the USAO, the Court determines it must grant  
3 Defendant Ackerman's Motion for Judgment of Acquittal Pursuant to  
4 Federal Rules of Criminal Procedure 29 on Counts 1, 4, 5, and 10, ECF  
5 No. 1205; Defendant Gordon's Motion for Judgment of Acquittal, ECF No.  
6 1206; and Defendant Gordon's Renewed Motion for Judgment of Acquittal  
7 or in the Alternative Dismissal with Prejudice, ECF No. 1261.  
8

9 As to Defendant Ackerman, there was no evidence presented from  
10 which a reasonable juror could find that Defendant Ackerman conspired  
11 or aided and abetted the conspiracy alleged in Count 1, or aided and  
12 abetted the false statements alleged in Counts 5 and 10. No  
13 reasonable juror could find that Defendant Ackerman's statements and  
14 actions were other than those that could be lawfully taken by a crop  
15 insurance agent on behalf of his insureds. There is no direct or  
16 circumstantial evidence that Defendant Ackerman knowingly assisted the  
17 alleged conspiracy or the alleged willful overvaluing of potatoes.  
18 For these reasons, the Court grants Defendant Ackerman's Rule 29  
19 motion and dismisses Counts 1, 5, and 10 as to him.  
20

21 The Court also finds the evidence presented as to Defendant  
22 Gordon is insufficient to sustain a conviction against him as to Count  
23 1: the only count remaining as to Defendant Gordon. No direct or  
24 circumstantial evidence was presented from which a reasonable juror  
25 could find Defendant Gordon guilty of the alleged conspiracy to  
26 defraud the United States or to influence the action of the Federal  
27 Crop Insurance Corporation (FCIC) or an insurance company reinsured by  
28

1 FCIC. The evidence showed that Defendant Gordon grew a variety of  
2 crops and that, as a result, he was unable to have an insurable potato  
3 loss until he suffered a revenue loss as to all of his other crops.  
4 There was no evidence that Defendant Gordon anticipated, controlled,  
5 or manipulated the loss he suffered to his non-potato crops.  
6 Accordingly, after considering all of the evidence presented at trial  
7 in the light most favorable to the USAO, the Court grants Defendant  
8 Gordon's Rule 29 motions. Count 1 is dismissed as to Defendant  
9 Gordon.  
10

11 **B. The USAO's Motion to Dismiss Without Prejudice**

12 The USAO seeks leave of court to dismiss the Second Superseding  
13 Indictment without prejudice as to the remaining counts: Counts 1, 5,  
14 and 10. ECF No. 1260. Based on the record before the Court at this  
15 time, the Court determines the USAO's motion to dismiss Counts 1, 5,  
16 and 10 without prejudice as to the remaining Defendants is made in  
17 good faith. *See United States v. Hayden*, 860 F.2d 1483, 1487-88 (9th  
18 Cir. 1988). Leave of Court is given to dismiss Counts 1, 5, and 10 as  
19 to Defendants Olsen, Peterson, Bennett, Olsen Ag., Inc., POCO, and  
20 TCP. The Court otherwise makes no judgment as to the merit or wisdom  
21 of this dismissal.  
22

23 **C. Conclusion**

24 For these above-given reasons, **IT IS HEREBY ORDERED:**

- 25 1. Defendants' Motion for Judgment of Acquittal on Count  
26 11/Mail Fraud, **ECF No. 1153**, is **GRANTED**.  
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28

2. Defendants Peterson and POCO's Motion for Judgments of Acquittal on Counts 1, 4 and 5, and to Strike or Withdraw Portions of Count 1, **ECF No. 1202**, is **GRANTED IN PART** (Count 5 as to POCO) **and DENIED IN PART** (remainder).
3. Defendants TCP and Bennett's Motion for Judgment of Acquittal Pursuant to Rule of Criminal Procedure 29(a) and to Dismiss Counts 1, 4, 5, and 10, Joinder in Other Defense Motions, and Renewal of Motion to Dismiss Because Prosecution is Barred by Statute of Limitations, **ECF No. 1203**, is **DENIED**.
4. Defendants' Motion for Judgment of Acquittal on Counts 4, 5, and 10, **ECF No. 1204**, is **DENIED**.
5. Defendant Ackerman's Motion for Judgment of Acquittal Pursuant to Federal Rules of Criminal Procedure 29 on Counts 1, 4, 5, and 10, **ECF No. 1205**, is **GRANTED IN PART** (Counts 1, 5, and 10) **and DENIED AS MOOT IN PART** (Count 4).
6. Defendant Gordon's Motion for Judgment of Acquittal, **ECF No. 1206**, is **GRANTED**.
7. The USAO's Motion for Dismissal without Prejudice, **ECF No. 1260**, is **GRANTED**.
8. Defendant Gordon's Renewed Motion for Judgment of Acquittal or in the Alternative Dismissal with Prejudice, **ECF No. 1261**, is **GRANTED**.
9. Count 1 is **DISMISSED** with prejudice as to Defendant Gordon.

10. Counts 1, 5, and 10 are **DISMISSED** with prejudice as to Defendant Ackerman.

11. Counts 1, 5, and 10 are **DISMISSED** without prejudice as to Defendants Olsen, Peterson, Bennett, Olsen Ag., POCO, and TCP.

12. All pending motions, deadlines, hearing, and trial dates are **STRICKEN**.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to counsel and the U.S. Probation Office.

**DATED** this 12<sup>th</sup> day of July 2013.

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s/Edward F. Shea  
EDWARD F. SHEA  
Senior United States District Judge